

REMARKS

Reconsideration and allowance of the instant application are respectfully requested.

Claim status

Claims 10-17 are withdrawn from consideration. Claims 1, 4-5, 7-9, 18 and 19 are pending. Claims 2-3 and 6 are cancelled. No new matter is added.

Obviousness-type Double Patenting Rejection

Claims 1-9, and 18-19 are provisionally rejected on the grounds of non-statutory obviousness-type double patenting as not being patentable over claims 1-11 of co-pending US application Serial No. 10/588,696.

Applicant acknowledges the rejection and shall file the necessary Terminal Disclaimer to overcome the rejection upon the allowance of claims in the instant application.

§103 Rejection

Claims 1-9, and 18-19 are rejected as unpatentable over Sluma (US5290448) in view of Wentholt (US5762798). Applicant respectfully disagrees in view of amended claim 1. Claim 1 has been amended to include all or parts of claims 2-3, and 5-6.

Sluma is distinguished from claim 1, in one respect, because claim 1 recites a membrane that is made of a completely different polymer. Sluma's membrane is a copolymer of acrylonitrile, acrylic ester, and ionic monomer, Abstract.

Claim 1 now recites:

"[a] membrane being based on a hydrophobic first polymer being selected from the group consisting of an aromatic sulfone polymer, a polycarbonate, polyimide, polyetherimide, polyetherketone, polyphenylene sulfide, or a copolymer or a modification of these polymers, or a mixture of these polymers and a hydrophilic second polymer being selected from the group consisting of polyvinylpyrrolidone, polyethylene glycol, polyvinyl alcohol, polyglycol monoester, polysorbate, carboxymethylcellulose, or a modification or copolymer of these polymers,"

Accordingly, claim 1 distinguishes Sluma.

Additionally, the Examiner contends that the sieving coefficient is merely obtained by varying the stretching or the pull-off rate. The Examiner [apparently] bases this conclusion upon the data set forth in Sluma's Tables for Examples 1-3. There does not appear to be any correlation between stretching/pull-off rate and sieving coefficients. Also, the albumin sieving coefficient are not reported at the same significance as those used in the instant claims. Moreover, the Examiner's logic is flawed. Stretching/pull-off rate, if

increased, would tend to increase all pore diameters. So, how does the stretch or pull-off rate account for virtually no transport of albumin (maximum sieving coefficient of 0.005) and significant transport of cytochrome c (minimum sieving coefficient of 0.8). Mere stretching/pull-off rate does not account for these differences in transport.

Also, Sluma requires the post-treatment of the hydrophobic membrane with glycerine (glycerol) to make a hydrophilic membrane. Column 3, lines 37-38 and column 4, lines 11-12. The instant claims recite that the membrane is "free from pore-stabilising additives." Also see the instant specification, referring to the published application, at Paragraph 22.

Wenthold, on the other hand, is also distinguished from claim 1. Wenthold discloses two hollow fiber embodiments: a membrane made of a polyimide, column 5, lines 57-65, that "immediately wets with aqueous solutions without the use of PVP...," column 6, lines 34-36; and a membrane made from a polysulfone and PVP, column 5, lines 12-23.

Wenthold's polyimide membrane specifically teaches away from the use of PVP (see quote above). Therefore, Wenthold teaches away from the combination of polyimide and PVP. (Why

would one combine these two components, if the combination is not necessary?)

Wenthold's polysulfone/PVP membrane is also very different from the membrane of claim 1. Wenthold provides little information about their membrane and no description of the pore structure. Wenthold does state that this membrane has an albumin rejection rate of 80%, column 30, line 31, and that corresponds to a sieving coefficient of 0.2. This is much different from the claimed maximum albumin sieving coefficient of 0.005. In fact, it is at least 2 orders of magnitude different!

Accordingly, the combination of Sluma and Wenthold do not make the claimed invention obvious.

Conclusion

In view of the foregoing, Applicant requests an early  
Notice of Allowance.

Respectfully submitted,



---

Robert H. Hammer III  
Attorney for Applicant  
Registration No. 31,764

Customer No. 29494  
Hammer & Associates, P.C.  
3125 Springbank Lane  
Suite G  
Charlotte, NC 28226  
Telephone: 704-927-0400  
Facsimile: 704-927-0485  
F:\2037\007\Amendment062909.doc